



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

March 14, 2008

Number: **200839040**

Release Date: 9/26/2008

UIL: 501.33-00

LEGEND

ORG = Organization name Address = address XX = date

ORG

ADDRESS

Person to Contact:

Identification Number:

Contact Telephone Number:

In Reply Refer to: TE/GE Review Staff

EIN:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: June 12, 20XX

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX. You have agreed to this adverse determination.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. section 501(c)(3) and exempt under section 501(a) must be organized and operated exclusively for an exempt purpose. Your organization is not a charitable organization within the meaning of Treasury Regulations section 1.501(c)(3)-1(d).

You failed to meet the requirements of IRC section 501(c)(3) and Treas. Reg. section 1.501(c)(3)-1(d) in that you failed to establish that you were operated exclusively for an exempt purpose.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120.

These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling: Or you can contact the Taxpayer Advocate nearest you by calling: or writing to: Internal Revenue Service, Office of Taxpayer Advocate.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
300 N. Los Angeles St., MS 7300
Los Angeles, CA 90012

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear ,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX December 31, 20XX

LEGEND

ORG = Organization name XX = Date Director = Director

ISSUE:

Should ORG's Federal tax exempt status under section 501(c)(3) of the Internal Revenue Code be revoked for failure to operate exclusively for exempt purposes?

FACTS:

ORG was founded by Director in 20XX. In 20XX, ORG applied for Federal tax exemption and was subsequently recognized by the IRS, by the letter dated October 30, 20XX, as an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. ORG was also determined to be a public charity under section 509(a)(2) of the Internal Revenue Code.

The purpose of ORG, as stated in its articles of Association, is to attract individual public contributions of \$ each and to forward all resulting annual income to help support federally sponsored children's education and health programs around America. The board of directors is composed of Director, Director, and a secretary.

Per Director, well known children charity organizations such as
etc receive most of financial supports from the public. However, there are organizations that are not well known that do not get much support. ORG will solicit and collect public contributions and forward them to children welfare funds that do not receive much support. The organization states on its website that it proudly operates on behalf of the three very important and distinct groups of people. They are:

1. Children and families who are in need.
2. Families and individuals who want the possibility of owning a home, but who may not have the ability or means to purchase a place they can call home.
3. Homeowners:
 - A. Who have the desire to use their real estate as a way to personally help provide direct support through a responsible, reputable and federally recognized charitable organization;
 - B. Who are uncomfortable with and/or do not wish to use real estate agents or corporations;
 - C. Who have been unsuccessful selling their homes in the real estate market

Since its inception in 20XX, the organization has not engaged in any activities to achieve its exempt purposes. The organization has no assets and receives no support since it came into existence.

Since March 20XX, the organization's planned activity is the "Homeowner Contest." Per Director, the Homeowner Contest is "*A new way of doing business*". It has not been done by other non-profit organizations.

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The Homeowner Contest works as follows. Homeowners who want to sell their house, but do not want to deal with real estate agents, or do not get the offers they like, or cannot sell their house on the real estate market, or who want to use their house as a way to help the children, will request ORG to hold a contest using their house as a prize.

Each contest participant (not the homeowner) will donate \$ (\$ if paid by credit card) for a chance to win the house. The contest participants are informed that the \$ they paid to participate in the contest will be tax deductible as charitable contribution. The numbers of participants and the proceeds from the contest will determine whether or not any charity will receive distributions. There are three possible ending scenarios for each contest.

Scenario 1: The proceeds from the contest exceeded the homeowner's desirable selling price - Once the proceeds from the contest exceeded the seller's desirable selling price, the seller is obligated to transfer the title to the winner. The winner is not randomly drawn. Instead, the participant will have to tell the seller, in the eyes of the seller, why he or she deserves to win the house. Director provided the following example to illustrate scenario 1

Proceeds from contest

Less: Seller's share of proceeds

Gross profit from contest

Less:	Contributions to a children fund
	Salaries & contest expenses
	Scholarship fund - 50%
	Contributions to a children fund - 50%

Net profit

Scenario 2: Proceeds from the contest equaled the homeowner's desirable selling price - If the proceeds from the contest equals to the homeowner's desirable selling price, the seller will get the entire proceeds from the contest and transfer the title to the selected winner. No children funds will receive any money. The director will not get his share of salaries/expenses from the proceeds.

Proceeds from contest

Less: Seller's share of proceeds

Gross profit from contest

Less:	Contributions to a children fund
	Salaries & contest expenses

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Scholarship fund - 50%

Contributions to a children fund - 50%

Net profit

Scenario 3: Proceeds from the contest are less than the homeowner's desirable selling price -
If the proceeds from the contest are less than the homeowner's desirable selling price, the seller can accept it or elect to have the proceeds donated to a children fund. The seller is not obligated to select a winner.

Per Director, the homeowner contest will benefit three classes of people:

1. The homeowners
2. Someone who wants a house but cannot afford to buy a house, and
3. The children and families in need

If there is any money to be distributed to a children's fund, Director will be the one selecting which organization is to receive the money. The organization that best uses the money will get the money. Director will rely on the IRS's report to determine which organization allocated the most funding to its programs.

Director intends to put the homeowner contest in to operation within next year. He will utilize Newswire, websites, non-profit forums to promote the homeowner contest.

Once the homeowner contest becomes successful, Director will expand it nationwide and keep it going for 30-50 years. He will also consider expanding the contest into other areas such as real estate. If there are 4-5 contests per year, Director will manage the contest on full-time basis and make it his own employment.

In April 20XX, ORG was offered for sale on eBay. The starting bid was \$. The bidding period began on April 5, 20XX and ended on April 12, 20XX. ORG was subsequently removed from eBay prior to closing. When asked why ORG was listed on eBay for auction and who offered the organization for sale, Director answered "I don't know". "They said sorry". When asked who "They", the director responded "eBay". "They even credited my credit card for the transaction fee." "It might have been somebody else. This stuff happens all the time."

When asked if it was the secretary who put the organization on eBay for sale, Director said, "No. It was not her."

When asked in what circumstance Director found out that the organization was listed on eBay for sale, Director responded, "Somebody contacted me to find out more information regarding the organization and the sale."

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At the conclusion of the interview, Director said, *"It is good if we can find out who put the organization on eBay for sale. If not, it is okay."*

LAWS:

Section 501(c)(3) of the Internal Revenue Code exempts from Federal income tax corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(c)(2) of the Regulations clarifies that an organization is not operated exclusively for exempt purposes if its net earning inures to the benefit of private individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states, "An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders or the organization, or persons controlled, directly or indirectly, by such private interests."

Revenue Ruling 81-94, 1981-1 CB 330 held that an exempt organization operates to serve the private interest of the designated individual is not operated exclusively for religious or charitable purposes. Therefore, it does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

GOVERNMENTS POSITION:

An organization, to be qualified as an entity described in section 501(c)(3) of the Internal Revenue Code or in certain other categories of tax-exempt organization, must be organized and operated so that no part of its net earning inures to the benefit of any private shareholder or individual. The essence of the concept is to ensure that a tax-exempt charitable organization is serving a public interest and not a private interest. Section 1.501(c)(3)-1(c)(2) of the Regulations made it clear that an organization is not operated exclusively for exempt purposes if its net earning inures to the benefit of private individual. ORG does not operate in accordance with its exempt purposes. Since its inception, the organization has not engaged in any activities to accomplish and further its exempt purposes. The

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organization has no assets and plans enabling it to conduct activities to further the exempt purposes. The children the organization claims the homeowner contest will benefit are not readily identifiable. The organization claims that he will help lesser known children welfare funds. However, the organization's website only listed the very well-known orgs such as
etc...

The homeowner contests, although has not been implemented, once carried out, will substantially serve the private interests of the persons who are not the object of charity. Therefore, by conducting the homeowner contest, the organization substantially serves the private interest of individuals who are not in a charity class violating the basic requirement of IRC section 501(c)(3), operated exclusively for religious, charitable, scientific purposes.

The evidence indicates that the director intends to carry out the homeowner contest (promoting the contest in through newswire, non-profit forum, etc.)

Federal tax exempt status under section 501(c)(3), or any other code section, is granted to organizations with the intent that these organization will serve the public interest and operate in manner consistent with the purposes for which exemption was granted. Federal tax exempt status is not an asset such as stock, bond, rights, or a business that can be transferred, bought, and sold. Offer for sale of Federal tax exempt status is seeking to substantially enrich the private individual selling the exemption and therefore is not an exempt purpose.

Therefore, ORG's Federal tax exempt status under IRC section 501(c)(3) should be revoked for failure to operated exclusively for exempt purposes as described under such section. See Laws section above.

TAXPAYERS POSITION:

The taxpayer has verbally agreed to the proposed revocation of tax exempt status under IRC section 501(c)(3).

CONCLUSION:

ORG's Federal tax exempt status under IRC sections 501(c)(3) should be revoked for failure to operate exclusively for charitable, religious, and scientific purposes. The effective date of this revocation will be January 1, 20XX.